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Attorneys for Plaintiff IBIZ, LLC

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Fax: (510) 583-3660

Attorneys for Defendant

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

IBIZ, LLC, a California Limited Liability  
Company,

Plaintiff,

vs.

CITY OF HAYWARD, a California  
municipal corporation,

Defendant

Case No: CV 13 1537 SC

**STIPULATION AND ~~PROPOSED~~  
ORDER RE FILING OF  
SUPPLEMENTARY MATERIAL**

**Hrg. Date:** June 21, 2013

**Hrg. Time:** 10:00 a.m.

**Location:** Crtrm. 1, 17th Floor

**Judge:** Samuel Conti

COME NOW PLAINTIFF IBIZ AND DEFENDANT CITY AND STIPULATE AS FOLLOWS:

On May 7, 2013, Plaintiff IBIZ, LLC (“IBiz”) filed its motion for preliminary injunction. On May 21, 2013, the City filed its papers in Opposition to the Motion. Under Local Rule 7-3(d), no additional memoranda, papers or letters may be filed without prior Court approval.

**STIPULATION**

The parties, by and through their counsel of record, HEREBY STIPULATE, subject to the approval of the Court, to the filing of the following supplementary material:

- (1) Supplemental Declaration of Michael Daniels in Support of IBiz’ Motion for Preliminary Injunction (a true copy of which is attached hereto as Exhibit 1);
- (2) Supplemental Declaration of Michael G. Vigilia in Support of Opposition to Motion for Preliminary Injunction (a true copy of which is attached hereto as Exhibit 2).

DATED: May 28, 2013

John H. Weston  
G. Randall Garrou  
Jerome Mooney  
WESTON, GARROU & MOONEY

By: /s/ G. Randall Garrou  
G. Randall Garrou  
Attorneys for Plaintiff IBIZ LLC

DATED: May 28, 2013

MICHAEL S. LAWSON, CITY ATTORNEY

By: /s/ Michael G. Vigilia  
MICHAEL G. VIGILIA  
Assistant City Attorney, City of Hayward  
Attorney for Defendant, City of Hayward

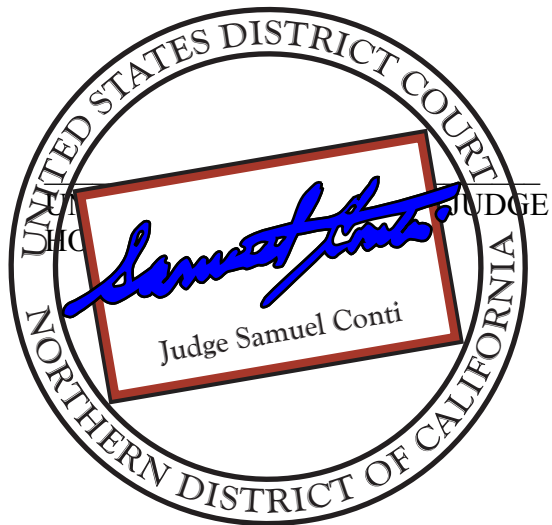
**ORDER**

Based on the stipulation of the parties, and good cause appearing therefore, the Court hereby authorizes filing of the following supplementary material:

- (1) Supplemental Declaration of Michael Daniels in Support of IBiz' Motion for Preliminary Injunction;
- (2) Supplemental Declaration of Michael G. Vigilia in Support of Opposition to Motion for Preliminary Injunction.

**IT IS SO ORDERED.**

DATED: 05/29/2013 \_\_\_\_\_



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**EXHIBIT 1**

Supplemental Declaration of Michael Daniels in Support of IBiz'  
Motion for Preliminary Injunction

John H. Weston (SBN: 46146)  
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G. Randall Garrou (SBN: 74442)  
randygarrou@wgdllaw.com  
Jerome H. Mooney (SBN 199542)  
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12121 Wilshire Boulevard, Suite 525  
Los Angeles, CA 90025-1176  
Telephone: (310) 442-0072  
Facsimile: (310) 442-0899

Attorneys for Plaintiff IBIZ, LLC

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

IBIZ, LLC, a California Limited Liability  
Company,

Plaintiff,

vs.

CITY OF HAYWARD, a California  
municipal corporation,

Defendant

Case No: CV 13 1537 SC

**SUPPLEMENTAL DECLARATION OF  
MICHAEL DANIELS IN SUPPORT OF  
IBIZ' MOTION FOR PRELIMINARY  
INJUNCTION**

**Date:** June 21, 2013

**Time:** 10:00 a.m.

**Location:** Crtrm. 1, 17th Floor

**Judge:** Samuel Conti

I, MICHAEL DANIELS, hereby declare as follows:

1. I am the Managing Member of IBIZ, LLC, a California Limited Liability Company ("IBIZ"), and supplement my prior declaration filed herein. I have personal knowledge of each of the facts set forth below unless specifically stated only on information and belief, and, if called as a witness at trial, would so testify.

2. By way of a written disclaimer, customers of IBiz are made aware of the fact that all "reveal" methods will reveal the same result and that no method of revealing the results will generate a different result from that disclosed by either of the other two methods. As a part of the process of opening an account, customers are required to sign a rental agreement (a true copy of

1 which is attached hereto as Exhibit A) and specifically initial a short paragraph therein which  
2 states, with respect to the sweepstakes program:

3 "I understand I am not gambling. I am playing a promotional game in which all  
4 winners are predetermined. The games have no effect on the outcome of the prizes  
5 won. I also understand that the games are an entertaining way to reveal my prizes  
6 and I could have them instantly revealed and would have the same result."

7 3. Additional information is also provided in the sweepstakes rules (Exhibit B) (which  
8 automatically appear whenever a participant elects to have the results of his sweepstakes entries  
9 revealed by utilizing any of the pseudo-interactive games). Paragraph 5 of the Rules states, in  
10 part:

11 You can find out what you have won simply by asking the point-of-sale clerk at the  
12 Sponsor's store. You can also choose to reveal your entries at the computer terminal,  
13 in one of two ways: (1) using the controls provided, you can reveal the entry results  
14 all at one time, as a single number that will be displayed on the monitor, or (2) you  
15 can reveal one entry at a time. If you reveal your entries this way, a themed display  
16 will show on the monitor as the means of revealing each entry.

17 I declare under penalty of perjury that the foregoing is true and correct. Executed this

18 28 day of May, 2013, within the United States of America.

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MICHAEL DANIELS

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EXHIBIT "A"

IBIZ' Customer Rental Agreement



## Computer Time Purchase Agreement

❁ I understand that I am purchasing computer time to be used at this location. I also realize that I can request to participate in the promotional game for free. I understand that the promotional games are a tool with the sole purpose to increase the sale of computer time at: \_\_\_\_\_

❁ I understand the rules of this promotional game are posted: IBIZ LLC.

And the odds of to this promotional game are posted:

IBIZ LLC.

❁ I understand that I can enter this promotional game for free. I understand for free means with no purchase of any kind. To enter for free I have two options, mailing in free entry form to: Figure 8 Technologies, P.O. Box 83, Simpson, NC, 27879 or request a free entry here at the location. I also realize by entering with free entry form, mailing in for free entry, or playing promotional entries given at time of purchase I have the same odds of winning, regardless of which method I choose.

❁ I understand that I can request a copy of the odds and rules to this promotional game at any time. I also understand that if I do not understand anything, I may write in to: Official Rules, P.O. Box 83, Simpson, NC, 27879 for a full set of official rules.

❁ I understand I am not gambling. I am playing a promotional game in which all winners are predetermined. The games have no affect on the outcome of the prizes won. I also understand that the games are an entertaining way to reveal my prizes and I could have them instantly revealed and would have the same result.

❁ NAME: \_\_\_\_\_

❁ DOB: \_\_\_\_/\_\_\_\_/\_\_\_\_

❁ SIGNATURE: \_\_\_\_\_



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EXHIBIT "B"

IBiz' Sweepstakes Rules

NO PURCHASE OF THE SPONSOR'S COMPUTER TIME OR ANY OTHER PRODUCT OR SERVICE IS REQUIRED TO ENTER OR PARTICIPATE IN THIS PROMOTIONAL GAME. PARTICIPATION IN THIS PROMOTIONAL GAME IS FREE. PURCHASE OF COMPUTER TIME OR ANY OTHER PRODUCT OR SERVICE WILL NOT INCREASE YOUR CHANCES OF WINNING. THESE OFFICIAL RULES GOVERN ALL OF THE SPONSOR'S PROMOTIONAL GAMES.

1.ELIGIBILITY. This promotional game is open to legal residents of the 50 states of the United States and of the District of Columbia who are 18 years of age or older at the time of participation and who are not ineligible as set out in these Official Rules. Void wherever prohibited by law. Employees (and members of employees' immediate families and residents in their households) of (the "Sponsor") and the Sponsor's distributors and participating retailers together with the parent companies, affiliates, subsidiaries and advertising and promotion agencies of all of them, are not eligible to play or win.

2.SPONSORSHIP. The Sponsor of this promotional game is the independent retailer who supplies the work station services and the platform on which the promotional game is played, and who disburses prizes to winning participants. The Sponsor's name is: @STORE\_NAME, @STORE\_ID.

3.HOW TO ENTER. The promotional game begins at 12:00 AM, EST on @START\_DATE And ends at 11:59 PM EST on @END\_DATE. You may purchase computer time or fill out free entry (either mail in or in-store) to enter. For each dollar of such purchase you will be awarded 100 free points to enter the promotional game. (If you choose to reveal the award value of an entry by the entertaining monitor display, see "How To Participate," below. ) When revealed each different point denomination is a single entry from its own predetermined pool of entries. Full odds for each pool are listed below.

4.TO ENTER WITHOUT PURCHASE: (a) ask the Sponsor free daily entry, limited to 100 points per person per day and usable only at the premises of that Sponsor; or (b) ask the Sponsor for an official free entry request form, legibly hand print all of the information requested on the form and follow the mailing instructions on the form; or (c) on a postcard or sheet of white paper no smaller than three inches by five inches (3" x 5") by hand, print your name, address, city, state, zip code, age, telephone number, the date you are preparing your request and the name and address of the participating retailer at which you will redeem your free entry. Mail the hand-posted official free entry request form or handwritten free entry request (as to both) with the hand-addressed envelope or hand-addressed postcard address and return address also handwritten, to the Sponsor at the following address:

Official Free Entry Request

3506 N E Greenville Blvd

Greenville, NC, 27834

No return envelope is required. Limit of 500 points per complying stamped hand-written outer envelope or complying stamped hand-written postcard. Each qualifying mail-in request received during the contest period will be awarded free entries equivalent to the free entry credits that normally accompany a purchase of \$5.00 worth of computer time. Free entry requests will be disqualified for any

of: (1) ineligibility, (2) inclusion with the free entry request of any other correspondence, promotional materials or other materials, (3) lost, late, damaged or misdirected or postage due requests, (4) requests that in the opinion of the Sponsor are machine-generated in whole or in part, including but not limited to the stamped outer envelope or postcard, (5) requests that in the Sponsor's opinion are not hand written and hand addressed (both) by the person to whom the free entry is to be mailed, and (6) requests that in the opinion of the Sponsor do not comply with these official rules. The decision of the Sponsor regarding eligibility or disqualification of free entry requests received, will be final. A free entry will not entitle the person requesting it or any other person, to computer time. Free entries are not transferable from the person requesting the free entry to any other person. Free entry requests received by the Sponsor become the Sponsor's property upon receipt. Ineligible and noncomplying requests will not be acknowledged.

5.HOW TO PARTICIPATE. Participation in the promotional game, whether by free entry or by purchase, is limited to the premises of the Sponsor. You must have a valid user account with a login ID and password, to participate. Obtaining a user account is free of charge but the participant's government-issued photo identification document showing the participant's age and current residence, along with the participant's social security number is required to open an account. (See Other Terms and Conditions and Privacy Policy, below.) The Sponsor's staff will instruct you how to open an account and how to use the electronic equipment upon which the promotional game is conducted. The promotional game entry points that you register in this way will entitle you to participate in the promotional game at the Sponsor's point of sale. You can find out what you have won simply by asking the point-of-sale clerk at the Sponsor's store. You can also choose to reveal your entries at the computer terminal, in one of two ways: (1) using the controls provided, you can reveal the entry results all at one time, as a single number that will be displayed on the monitor, or (2) you can reveal one entry at a time. If you reveal your entries this way, a themed display will show on the monitor as the means of revealing each entry. Your odds of winning are the same regardless of the method you choose to reveal the results of your entries. If you have entered the promotional game by purchasing computer time, the use of promotional game entry credits will not reduce the computer time that you have purchased. Whether you have entered for free or by purchase, you can not use awarded credits to play or replay the promotional game. To collect at any time, tell the Sponsor's point-of-sale clerk what you have won. On verification of that amount, the Sponsor will pay to you in currency the amount that you have won. The Sponsor reserves the right to substitute awards of equal value in the form of merchandise, a prepaid gift card or a check sent to you through the mail. Promotional game entries are not available from purchase of any product or service at the Sponsor's store, other than the purchase of computer time. The right to receive promotional prizes cannot be assigned or transferred by the participant who is entitled to the prizes.

6.HOW WINNERS ARE SELECTED. Resident in the computer inside the Sponsor's computer intranet are multiple finite deals of entries. The entries are in effect, electronic game pieces. Each electronic game piece has an assigned value, as low as zero. Please see the official odds disclosure table for the amounts of each prize. Each time you cause the electronic system to reveal an entry's value the computer will sequentially select one entry from the finite deal of entries. The specific entry pool involved is

determined by the type of reveal theme that you select and the number of points you choose to reveal at one time. Again, see the odds table for detail. Upon such selection, the value previously assigned to the selected entry determines what (if anything) you have won. Your participation in the game is complete at the point of sale when the entry or entries are assigned to you. Revealing the entries' value is not part of the game or related to selection of winners. If you are revealing the outcome by themed monitor display of the game piece's value, the computer pre-selects the outcome of the entertaining display that you have selected, even in displays that appear to be interactive. As to "interactive" displays, your actions will have no effect on the outcome. These displays are pseudo-interactive, as to the prize awarded. For the pseudo-interactive displays, the full value of the entry will be revealed immediately following the participant's actions only if those actions are optimum. If they are not optimum, the full value will be revealed later. For hypothetical example, in the pseudo-interactive display of five card draw poker, if the electronic game piece has a value of \$1 and the reveal presents that value as three of a kind, the reveal will display a \$1 award only if the participant holds the three of a kind. If instead the participant discards the three of a kind, the reveal will at that time show that the participant has won nothing. The dollar which the participant actually won will be revealed later: either by being added to the predetermined award made on the next winning entry of 25 cents or more, or if there is none, being added directly to the numerical display of the participant's final aggregate total for all entries revealed. When used, the entry is removed from the deal and is not used again. The value (if any) of the entry selected will be added to the prize award value display on the monitor of the computer that you are using.

7.ODDS OF WINNING. See Odds at Participating Retailer.

8.OTHER TERMS AND CONDITIONS OF THE OFFICIAL RULES. This promotional game begins on the beginning date posted above and on all workstations and ends on the earliest of (a) the ending date posted above and on all workstations or (b) when the deal of entries is exhausted or (c) when terminated by the Sponsor for the reasons stated below. The Sponsor reserves the right to modify and/or terminate this promotional game and to take such other measures the Sponsor may deem necessary or appropriate, in its sole discretion, to preserve the integrity or compliance of the promotional game or in the event that it or associated practices or equipment become corrupted, technically or otherwise. In such event, prizes will be awarded only from entries received prior to the date and time of termination or modification. Participating entrants release the Sponsor, together with (all of) the Sponsor's parent companies, affiliated companies, subsidiary companies, and all other businesses involved in this promotional game, as well as the employees, members, managers, officers and directors of each, of all claims and liability related to participation in this sweepstakes promotional game. Any promotional game notice, entry form or other writing, including writings in electronic form, that contain an error (printing, human, technical or other) shall be deemed null and void. Technical malfunction of the electronic equipment associated with this promotional game, voids all play on it. Winners may be required, at the sole discretion of the Sponsor, to complete, sign and return a winner's disclosure form an affidavit of eligibility/liability release and where legally permissible, a publicity release, as a condition precedent to the receipt of any prize to be awarded. All winners are subject to disclosure of their winnings and identifying information, to the extent such disclosure is required by law

or provided for in these Official Rules. Regardless of how winners use prizes awarded to them, all such awards are taxable income to the participant. Participants are responsible to pay all income and other taxes due in respect of awards of any size that they receive. The Sponsor tracks such awards on an individual-participant basis. The Sponsor is required by law to report to the IRS on Form 1099-MISC all winnings that for the calendar year to date aggregate to more than \$600. The Sponsor is required by law to collect patron personal information including social security numbers, so that the Sponsor can make the reports required by law. (The Sponsor's privacy policy is set out below.) Except where prohibited by law, all winners consent to the use of their names, home town, prizes won and likenesses for promotional purposes on behalf of the Sponsor and the participating retailer. All disputes and claims arising out of or relating to this promotional game shall be determined according to the laws of the state in which the Sponsor's store is located, without regard to such state's conflict of law principles. All participating entrants, by their participation, consent to the personal jurisdiction of the U.S. federal and state courts located in that state and agree that such courts have exclusive jurisdiction over all such disputes. All causes of action in any way arising out of or connected with this promotional game shall be resolved individually without resort to any form of class action litigation; and any claims, judgments and awards shall be limited to actual out-of-pocket expenses incurred.

9.PRIVACY POLICY. The Sponsor respects every patron's right to privacy and the importance of protecting information collected about them. The Sponsor have adopted an enterprise-wide privacy policy which guides how it will store and use the personal information which patrons provide in connection with their participation in the promotional game and their use of the computer work station. Any patron who has questions or comments about the Sponsor's privacy policy may contact the Sponsor for this propose by writing to: Privacy policy Administrator, 3506 N E Greenville Blvd, Greenville, NC, 27834. This policy applies only to information collected by the Sponsor through or derived from the medium of its computer work station and in connection with participation in its promotional game. Personal information is information which identifies the patron and may be used to contact the patron. These terms and conditions provide that children (under eighteen years of age) are ineligible to participate or to win prizes from their participation in the promotional game. CHILDREN MUST NEVER GIVE OUT THEIR NAMES, ADDRESSES, EMAIL ADDRESSES OR TELEPHONE NUMBERS, IN THE ABSENCE OF THEIR PARENTS' WRITTEN PERMISSION. No information should be provided to the Sponsor by or regarding children. If for any reason any person is concerned about a child's personally-identifying information having been supplied, such person should notify the Sponsor at the privacy policy address above. In response to the inquiry the Sponsor will review and remove the child's information as appropriate. In any event, the Sponsor does not knowingly disclose personal information about children, under any circumstances. The personal information provided by patrons will allow the Sponsor to make official reports required by law and to cooperate with government agencies, branches and processes. The Sponsor will use the information for no other purpose.

**PROOF OF COURTESY SERVICE BY EMAIL**

[Pursuant to Calif. Code of Civil Procedure § 1013a(3) and Fed.R.Civ.P. 5]

I am a resident of and/or employed in the County of Los Angeles, State of California. I am over the age of eighteen years and not a party to the within entitled action. I work at the law firm of Weston, Garrou & Mooney located at 12121 Wilshire Blvd., Suite 525, Los Angeles, California 90025.

On the date shown below, I served the following document:

**SUPPLEMENTAL DECLARATION OF MICHAEL DANIELS IN SUPPORT OF  
IBIZ' MOTION FOR PRELIMINARY INJUNCTION**

By delivery as follows:

**A courtesy copy was emailed on this date to the  
following counsel for plaintiff in related case  
No. 13-cv-1212 SC (Net Connections Hayward  
v. City of Hayward):**

**Stephen J. Meyer (smeyer@downeybrand.com)**

**Tory E. Griffin (tgriffin@downeybrand.com)**

**Kelly L. Pope (kpope@downeybrand.com)**

I declare under penalty of perjury that the above is true and correct.

Executed on May \_\_\_\_, 2013

/s/ G. Randall Garrou  
G. Randall Garrou

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**EXHIBIT 2**

Supplemental Declaration of Michael G. Vigilia in Support of Opposition  
to Motion for Preliminary Injunction



1 MICHAEL S. LAWSON (SBN 048172)

City Attorney

2 MICHAEL G. VIGILIA (SBN 228353)

Assistant City Attorney

3 CITY OF HAYWARD

777 B Street, 4th Floor

Hayward, CA 94541-5007

4 Tel: (510) 583-4450

Fax: (510) 583-3660

5 [Michael.lawson@hayward-ca.gov](mailto:Michael.lawson@hayward-ca.gov)

[Michael.vigilia@hayward-ca.gov](mailto:Michael.vigilia@hayward-ca.gov)

6 Attorneys for Defendant City of Hayward

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9 UNITED STATES DISTRICT COURT  
10 NORTHERN DISTRICT OF CALIFORNIA

11 I BIZ, LLC, a California limited liability  
12 company,

13 Plaintiff,

14 v.

15 City of Hayward,

16 Defendant

Case No. CV13 1537 SC

SUPPLEMENTAL DECLARATION OF  
MICHAEL G. VIGILIA IN SUPPORT OF  
OPPOSITION TO MOTION FOR  
PRELIMINARY INJUNCTION

Date: June 21, 2013

Time: 10:00 a.m.

Courtroom: 1

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19 I, MICHAEL G. VIGILIA, declare as follows:

20 1. I am an attorney duly licensed to practice in the State of California and admitted to  
21 practice before the United States District Court, Northern District of California. I am the  
22 Assistant City Attorney assigned to this matter. All facts set forth below are personally known to  
23 me to be true except those which are set forth upon information and belief, and as to those facts I  
24 am informed and believe, and thereupon allege that they are true.

25 2. On May 21, 2013 I filed, on behalf of the City of Hayward, a Request for Judicial Notice  
26 that erroneously identified Exhibit "C" as "City of Hayward Ordinance 13-03." Exhibit "C" is  
27 properly identified as "City of Hayward Ordinance 13-05."  
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1 3. Likewise, Exhibit “D” was erroneously identified as “Staff Report in support of  
2 Ordinance 13-03 dated February 19, 2013.” Exhibit “D” is properly identified as “Staff Report  
3 in support of Ordinance 13-05 dated April 2, 2013.”

4 I declare under penalty of perjury under the laws of the State of California and the United  
5 States that the foregoing is true and correct.

6 Executed this 28th day of May, 2013 in Hayward, California.

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9 /s/ Michael G. Vigilia  
Michael G. Vigilia  
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**PROOF OF COURTESY SERVICE BY EMAIL**

[Pursuant to Calif. Code of Civil Procedure § 1013a(3) and Fed.R.Civ.P. 5]

I am a resident of and/or employed in the County of Los Angeles, State of California. I am over the age of eighteen years and not a party to the within entitled action. I work at the law firm of Weston, Garrou & Mooney located at 12121 Wilshire Blvd., Suite 525, Los Angeles, California 90025.

On the date shown below, I served the following document:

**STIPULATION AND [PROPOSED] ORDER RE FILING  
OF SUPPLEMENTARY MATERIAL**

By delivery as follows:

**A courtesy copy was emailed on this date to the following counsel for plaintiff in related case No. 13-cv-1212 SC (Net Connections Hayward v. City of Hayward):**

**Stephen J. Meyer (smeyer@downeybrand.com)**

**Tory E. Griffin (tgriffin@downeybrand.com)**

**Kelly L. Pope (kpope@downeybrand.com)**

I declare under penalty of perjury that the above is true and correct.

Executed on May 29, 2013

/s/ G. Randall Garrou  
G. Randall Garrou